

## CHAPTER III - TRADE SECURITY CONTROLS AND THE DISPOSITION OF DoD PERSONAL PROPERTY

A. GENERAL. This chapter covers policy and procedures for the control of MLIs and CCLIs released by the DoD and incorporates the provisions of DoDD 2030.8, Trade Security Controls (TSCs) on DoD Excess and Surplus Personal Property. For the purposes of this manual, the term recipient refers to all non-DoD entities, DoD/Military Service museums and Foreign Military Sales (FMS)/MAP/Grant Aid programs covered in DoD 5105.38-M, Security Assistance Management Manual, which receive MLI/CCLI. The term subrecipient refers to any subsequent recipient. The term “release” used in this chapter encompasses disposition through transfer, donation, grant, loan, lease, barter, trade, exchange, sale or other authorized release. Note: The term DoD/Military Service museum includes those museums managed, controlled and administered by the DoD or a DoD Component activity.

B. APPLICABILITY. This chapter applies to all MLI/CCLI property owned, procured by or under the control of the DoD, herein referred to as U.S. Origin property, released to any non-DoD entity or DoD/Military Service museums (including any subsequent release by that museum), to include all Government owned property furnished to or acquired by DoD contractors. It also applies to U.S. Origin property that was sold by commercial sale or authorized for export by the DoS (PM/ODTC); the DoC, Bureau of Export Administration (BXA); the TD, Office of Foreign Assets Control (OFAC); or that is granted or transferred by the DoD through the MAP/Grant Aid Programs and returned to DoD control. TSCs are applicable to releases of all MLI/CCLI usable, salvage and scrap material of U.S. Origin, including DoD owned contractor inventory, and all subsequent actions thereof.

C. POLICY. It is DoD policy to:

1. Treat defense related technology as a valuable, limited national security resource, to be managed, conserved and invested in pursuit of national security objectives.

2. Manage and control the transfer of technology, goods, services, and MLI/CCLI consistent with U.S. National Security and foreign policy objectives and limit the transfer of advanced design know-how and advanced manufacturing know-how or technology on goods, services, and MLI/CCLI to any country or international organization, unless that transfer supports specified national security or foreign policy objectives.

3. Ensure that DoD excess, surplus and foreign excess personal property and MAP/Grant Aid Property returned to DoD control are disposed of in accordance with DoD 4160.21-M, Defense Materiel Disposition Manual, and this manual. Ensure that MAP/Grant Aid Property and FMS property disposed of under DoD 5105.38-M, is sold and/or exported directly or indirectly in accordance with applicable regulations of the DoS, DoC or TD. Ensure that government property in the possession of contractors is disposed of in accordance with the contract, the Federal Acquisition Regulation (FAR) Part 45, Federal Agency supplements, and this manual (see Chapter

VI). Included are all commodities controlled for reasons of national security, foreign policy, nuclear/chemical weapons proliferation, and short supply.

4. Coordinate with the DoS, Office of Regional Security and Arms Transfer (RSAT), provide for the demilitarization, control and disposal of MAP/Grant Aid Property and FMS property and coordinate with the DoS's PM/ODTC, the DoC's BXA and the TD's OFAC, for property exported under their export controls. NOTE: Programs administered by the TD's OFAC generally prohibit exports to Denied Areas except for humanitarian aid and non-sensitive informational materials.

5. Ensure that purchasers/recipients have cleared an Integrity and Reliability (I&R) and/or pre-award check or have a signed FMS Letter of Offer and Acceptance (LOA) prior to physical and/or title transfer of the items when purchases of U.S. Origin MLIs/CCLIs are made outside the U.S. or to non-U.S. persons.

6. Ensure that government property sold as scrap does not contain MLI/CCLI end-items, parts, components, attachments, etc., which can be restored, repaired or used for their original intended purpose or other alternate purpose. Material not meeting the definition of scrap will be offered for sale as either an item, salvage or as scrap containing salvageable material. (See Appendix 2 for definitions of "scrap" and "salvage".)

7. Ensure against the clandestine or illegal acquisition of MLIs/CCLIs.

8. Ensure compliance with the TSC procedures contained in this chapter.

#### D. RESPONSIBILITIES.

1. All DoD Components shall:

a. For property requiring demilitarization and authorized/approved for release through Specialized Sale (see Chapter 2, paragraph G.2.b.), Military Service sale (see Chapter 2), or other authorized release, ensure that the recipient has submitted a written agreement that property shall be returned to the DoD or that all demilitarization will be performed in accordance with this manual prior to the release to an entity other than another DoD Component activity (except DoD/Military Service museums) or friendly foreign government. This agreement will be as follows:

“The recipient agrees by date and signature below that required demilitarization will be accomplished and/or the appropriate Trade Security Controls will be satisfied as prescribed by DoD 4160.21-M-1, Defense Demilitarization and Trade Security Control Manual. All transactions are subject to the condition that prohibits further disposition (including retransfer, redonation, loan, lease, grant, barter, trade or resale) of the items. If the initial recipient receives approval for the further disposition of Munitions List material requiring demilitarization, the demilitarization requirement will be perpetuated on the appropriate documentation. Upon completion of the recipient's needs and in preparation of final disposition of the property through demilitarization, the

recipient will request the General Services Administration and/or the Defense Logistics Agency, Defense Logistics Support Command, Attn: DLSC-LC, as appropriate, to advise method and degree of demilitarization. **WARNING:** Failure to comply may result in denial of any future transactions with the recipient and may result in appropriate legal action in accordance with the International Traffic in Arms Regulations, 22 CFR, Parts 120-130; the Export Administration Regulations, 15 CFR; and other applicable U.S. laws."

b. Ensure that copies of the above signed agreement and all other pertinent documentation are forwarded to the DoD Demilitarization/TSC Program Office.

c. For all MLI/CCLI property, salvage and scrap material not requiring demilitarization and authorized/approved for release, ensure that the recipient is informed of the obligations under U.S. laws and/or regulations through submission of the following statement and that any subsequent release of the material by that recipient or subsequent recipients will require perpetuation of this statement, in writing. The statement is as follows:

**"NOTICE:** The recipient understands that the use, disposition, export and re-export of this property is subject to all applicable U.S. laws and regulations, including the Arms Export Control Act (P.L. 90-629; the Export Administration Act of 1979 (P.L. 96-72) (continued under Executive Order 12924); the International Traffic in Arms Regulations (22 CFR 120 et seq.); the Export Administration Regulations (15 CFR 730 et seq.); the Foreign Assets Control Regulations 31 CFR 500 et seq.); and the Espionage Act (18 USC 793 et seq.) which prohibits:

- a. The making of false statements and the concealment of any material information regarding the use or disposition, export or re-export of the property and,
- b. Any use or disposition, export or re-export of the property which is not authorized in accordance with the provisions of the above cited laws and regulations.

Before any export or re-export of this property is attempted, contact the Office of Defense Trade Controls, U.S. Department of State, and the Bureau of Export Administration, U.S. Department of Commerce to obtain a validated export license or other authorization."

d. Ensure that copies of all documents pertaining to the transaction are maintained in a permanent file. For MLI/CCLI not requiring demilitarization, files will be maintained in accordance with DoD Component file retention time frames.

e. Ensure that all museum recipients of MLI/CCLI have undergone an I&R and/or pre-award check and have been granted a TSC clearance prior to receipt of DoD property.

f. Investigative and intelligence organizations of the DoD Components shall provide required investigative support, when requested, to ensure the continued integrity of the TSC program and to identify instances of actual or attempted diversions.

g. Ensure that the statement found at subparagraph D.1.c. is included in all sales solicitations, and in all release documents subsequently provided to recipients of DoD material.

h. Ensure that MLI/CCLI property and/or material is not released through sponsored Qualified Recycling Programs (QRP) (except mutilated small arms cartridge cases) as required by DoDI 4715.4, Pollution Prevention.

**NOTE:** Under 22 USC 2778, there is the potential for the imposition of significant fines and imprisonment for willful violations of this statute or its implementing regulations. Additionally, the penalty provisions may apply if any willful, untrue statement of material fact is made in a registration, license or application. DoD personnel, under 22 CFR 127.3, can be subject to a fine or imprisonment for the willful violation of any provision of Public Law 94-329, Section 38 or 39, and under 15 CFR. Further, they can be individually liable if they are knowingly involved, directly or indirectly, or have knowledge of an improper transaction and do not report said improper transaction to the appropriate authority. Additionally, DoD personnel who knowingly violate DoD Demilitarization and Trade Security Control policy are subject to disciplinary action under appropriate DoD and/or DoD Component regulation.

2. HQ DLA, DLA Criminal Investigation Activity, shall:

a. Establish and maintain the appropriate DLA TSCROs for the purposes of complying with this manual and other applicable regulations.

b. Develop and coordinate policy and procedures applicable to investigative actions in support of the TSCRO function.

c. Provide staff surveillance to ensure effective application of policies and procedures relative to the TSCRO function.

d. Communicate directly with DTRA-ST with respect to illegal diversion of U.S. Origin property; suspensions and debarments of purchasers for violations of TSCs; and other matters, such as, Congressional, White House, DoD, DoC, or DoS export control policy determinations considered to be impacting directly on TSCRO activities as to require expeditious action or guidance.

e. Advise the DoD Demilitarization/TSC Program Office of TSC violations and subsequent investigations.

f. Maintain a central file on actual or suspected diversions of MLI/CCLI, by purchasers, subpurchasers, recipients and subrecipients to unauthorized consignees and destinations.

3. DLA TSCROs (see Chapter I, Attachment 1) shall:

- a. Ensure observance of and compliance with TSCs applicable to the release of material within their assigned areas.
- b. Develop and execute policy and procedures relative to investigative actions in support of TSCs.
- c. Communicate directly with DLA DCIA and the DoD Demilitarization/TSC Program Office with respect to: illegal diversion of MLI/CCLI; suspensions and debarments of purchasers/recipients of MLI/CCLI for violations of TSCs; and other matters such as, Congressional, White House, DoD, DoC or DoS export control policy matters considered to be impacting directly on TSCRO activities as to require expeditious action or guidance.
- d. Maintain a regional area file on actual or suspected diversions of MLI/CCLI by purchasers, subpurchasers, recipients or subrecipients to unauthorized consignees or destinations and incorporate these files into the DLA central database.
- e. Conduct or request I&R and/or pre-award checks and follow up on disposition of MLI/CCLI by purchasers, subpurchasers, recipients or subrecipients, including end use checks, on a selected basis.
- f. Approve additions, changes, and deletions to the Cleared Bidders List/Bidders Experience List (CBL/BEL) and forward to DRMS Sales Office for appropriate change to the Bidder Master File Extract (BMFE).
- g. Initiate appropriate action when bidder/recipient clearance, End Use Certification (EUC), Disposition and Use Certification (DUC), I&R check or delivery verification are not received or are suspect (where required).
- h. Conduct investigations as required or requested. Respond to queries and furnish investigative support, as required, to other enforcement/investigative agencies.
- i. Serve as primary point of contact on TSC matters for their assigned areas.
- j. Receive, review, and determine validity of Import Certification/Delivery Verification (IC/DV) documentation in overseas locations.
- k. Review, on a selected basis as appropriate, proposed sales items to ensure that MLI/CCLI are properly identified and appropriate sales terms and conditions are applied. Effect, in coordination with the Sales Contracting Officers (SCOs), the withdrawal from sale of suspected MLI/CCLI advertised in national/local/contractor inventory sales catalogs pending commodity determination and/or the inclusion of the appropriate sales terms and conditions.

l. Review, on a selected basis as appropriate, proposed release of MLI/CCLI for adequacy of documentation, the appropriateness of recipient, and their stated end-use.

m. Provide results of I&R and/or pre-award checks to SCOs/ACOs/PCOs/PLCOs or appropriate DoD Component.

n. Receive, assemble and forward appropriate transaction data to enforcement agencies.

o. Provide technical assistance to all U.S. government activities relating to the TSC Program.

4. Defense Contract Management Command (DCMC) and the Military Service defense contract management activities/entities shall:

a. Provide input regarding the buyers/recipients of property under its cognizance to the appropriate TSCRO for subsequent input into the BMFE.

b. Ensure that museum recipients of MLI/CCLI have undergone an I&R and/or pre-award check and have been granted a TSC clearance prior to receipt of DoD property.

c. Recommend, in coordination with the DoD Demilitarization/TSC Program Office, appropriate terms and conditions of sale applicable to demilitarization and TSCs.

d. Ensure inclusion of prescribed terms and conditions for TSCs in sale solicitations and contractual documents.

e. Ensure that update information which affects CBL/BEL/Debarred Bidders List (DBL) is provided to the appropriate TSCRO. Documents to be provided may include copies of sale solicitations, EUCs/DUCs (where required), requests for I&R checks and responses (overseas), contracts on MLI/CCLI property, lists of successful bidders/recipients, and requests for end use checks and responses.

f. Coordinate with the appropriate TSCRO in the development and carrying out of operating procedures to prevent sale or diversion of MLI/CCLI to unauthorized consignees or destinations.

g. Request I&R checks and first follow-ups to the pertinent diplomatic mission for overseas transactions. Where inadequate or no response to first follow-up is received, refer the matter to the TSCRO for action.

h. Initiate and coordinate, as necessary, end use checks with the appropriate TSCRO (see paragraph L. below).

i. In coordination with the appropriate TSCRO, review and approve/disapprove requests for resale.

j. Request follow-up action from the appropriate TSCRO as necessary (see paragraph J.

below).

k. Refer matters of actual or suspected diversions and TSC violations to the appropriate TSCRO.

l. Initiate necessary administrative action relative to TSC violations.

5. DCMC/Military Service ACOs/PCOs/PLCOs, as appropriate, shall:

a. Review the validity of demilitarization coding assigned to property available for release from DoD control and initiate challenges to those codes suspected of being incorrect through appropriate channels.

b. Ensure that all non-DoD and DoD/Service museum recipients of MLI/CCLI have undergone an I&R and/or pre-award check and have been granted a TSC clearance prior to receipt of DoD property.

c. Initiate necessary administrative action relative to TSC violations.

d. Ensure identification of MLIs and CCLIs and advise the appropriate TSCRO of such identity when offering material for sale or for other disposition. Further, material known to be not of U.S. origin shall be identified on the property list and to the TSCRO.

e. Advise the appropriate TSCRO of any information regarding bidders (including debarred or suspended bidders/recipients), purchasers, subpurchasers, recipients or subrecipients which the ACO/PCO/PLCO/contractor may possess that may influence the recipient clearance process.

f. Immediately notify the appropriate TSCRO of any actual, attempted, or suspected diversions and/or TSC violations.

g. Ensure that each non-DoD and DoD/Service museum recipient has provided the statement found at subparagraph D.1.c. above when requesting MLI/CCLI property.

f. Provide the U.S. Embassy in the country where property is to be sold with a copy of the Invitation For Bid (IFB)/solicitation, request their review and return notification if any items offered for sale should be withdrawn because of inappropriateness or conflict with U.S. Government foreign policy.

6. DRMS shall:

a. Review the validity of demilitarization coding assigned to property available for release from DoD control and initiate challenges to those codes suspected of being incorrect through appropriate channels.

b. Ensure that all museum recipients of MLI/CCLI have undergone an I&R and/or pre-award

check and have been granted a TSC clearance prior to receipt of DoD property.

c. Develop, maintain, and distribute a CBL, BEL, and DBL.

d. Develop, in coordination with the DoD Demilitarization/TSC Program Office, appropriate terms and conditions of sale applicable to demilitarization and TSCs.

e. Ensure that the statement found at subparagraph D.1.c. is included in all sales solicitations, and in all release documents subsequently provided to recipients of DoD material.

f. When sale or other release of demilitarization required property is authorized, ensure that the statement found at subparagraph D.1.a. is provided to the recipient.

7. The DRMS Sales Office and PLCOs shall:

a. Review the validity of demilitarization coding assigned to property available for release from DoD control and initiate challenges to those codes suspected of being incorrect through appropriate channels.

b. Ensure that all museum recipients of MLI/CCLI have undergone an I&R and/or pre-award check and have been granted a TSC clearance prior to receipt of DoD property.

c. Provide update information which affects CBL/BEL/DBL to the TSCRO. Documents to be provided may include copies of sale solicitations, EUCs, and DUCs (where required), requests for I&R and pre-award checks and responses, contracts on MLI/CCLI property, lists of successful bidders/recipients, and requests for end use checks and responses.

d. Ensure inclusion of prescribed terms and conditions for TSC in sale solicitations and contractual documents.

e. Coordinate with the TSCRO in the development and carrying out of operating procedures to prevent sale or diversion of MLI/CCLI to unauthorized consignees or destinations.

e. Request I&R checks and first follow-ups to the appropriate diplomatic mission for overseas transactions. Where inadequate or no response to first follow-up is received, refer the matter to the appropriate TSCRO for action.

f. Initiate and coordinate, as necessary, end use checks with the TSCRO (see paragraph L. below).

g. Request the TSCRO to conduct follow-up action as necessary.

h. Refer matters of actual or suspected diversions and TSC violations to the TSCRO.

i. Initiate necessary administrative action relative to TSC violations (see paragraph J. below).



8. DRMOs will:

a. Accurately identify MLIs and CCLIs and advise DRMS of such identity when reporting material for sale. Further, material known to be not of U.S. Origin shall be identified on the Property List or to the TSCRO.

b. Advise the TSCRO of any information regarding bidders/recipients (including debarred or suspended bidders/recipients), purchasers, subpurchasers, recipients or sub-recipients which the DRMOs may possess that may influence the recipient clearance process.

c. Immediately notify the TSCRO of any actual, attempted, or suspected diversions and/or TSC violations.

d. Prior to the release of property by other than sale, ensure that each non-DoD recipient requiring clearance by the provisions of this manual has been cleared by the TSCRO, has submitted an EUC/DUC (where required) and that all recipients have provided and signed the appropriate statement(s) found at subparagraph D.1. above, as applicable.

e. Ensure that the statement found at subparagraph D.1.c. is included in all sales solicitations, and in all release documents subsequently provided to recipients of DoD material.

f. When sale or other release of demilitarization required property is authorized, ensure that the statement found at subparagraph D.1.a. is provided to the recipient.

E. APPLICATION OF TSCs TO TRANSFER AND DONATION RECIPIENTS

1. Before disposing of MLI/CCLI property, Federal and State agencies shall consider the export control requirements as promulgated by the DoS, DoC and the TD, as applicable. Disposal methods shall ensure that appropriate safeguards are in place prior to disposal. These may include, but are not limited to: notification to the end-user; exclusion of individuals, entities, or countries who are excluded from Federal programs by the GSA; are delinquent on obligations to the U.S. Government; are debarred or suspended from DoD contracts; have been cited for previous Trade Security Control violations; and/or are subject to denial, debarment or other sanctions under public law.

2. For all MLI property requiring demilitarization and authorized for release, the recipient will perpetuate the statement found at subparagraph D.1.a. on all issue documentation to any subsequent recipient.

3. For all MLI/CCLI property, salvage and scrap material not requiring demilitarization and authorized for release, the recipient will perpetuate the statement found at subparagraph D.1.c. on all issue documentation to any subsequent recipient.

F. APPLICATION OF TSCs FOR SALES AND EXCHANGES OF MLI/CCLI.

1. All sale bidders and other prospective barter/trade/exchange sale recipients shall be required to complete and sign an EUC (see sub paragraph F.3.a. and paragraph G. below).

2. Targeted Weapons Systems (TWS) items (see Chapter 2) and demilitarization required material authorized for disposition by the provisions of this manual will be released only to recipients on the CBL or with concurrent submission and subsequent approval of an EUC. Recipients of this type of property will also be required to submit a DUC (attachment 2) for each line item bid for/requested (see subparagraph F.3.b. below).

3. Certification of recipients.

a. Prospective sales recipients of MLI/CCLI will submit the EUC (attachment 1) to the DRMS Sales Office. Prospective recipients of exchange sale MLI/CCLI property will submit the EUC to the DoD Demilitarization/TSC Program Office. If approved, the certification will:

(1) Remain valid for 5 years.

(2) Place the recipient on the CBL.

(3) Entitle the recipient to bid or request exchange/sale approval for TWS material or demilitarization required material authorized for disposition.

(4) Require the submission of the DUC with sale bid or exchange/sale request for TWS items or authorized items requiring demilitarization.

b. Submission and subsequent approval of the DUC indicates the recipient's agreement to:

(1) Maintain records regarding the acquisition and disposition of TWS items and authorized demilitarization required material.

(2) Provide disposition information and allow inventory record review for TWS material and/or authorized demilitarization required material acquired from the DoD.

(3) Request retransfer/resale authority for the disposition of TWS items or authorized demilitarization required material to any entity other than that stated on the DUC. NOTE: If no specific sub-recipient was identified on the DUC (by name, address and telephone number), retransfer/resale authority must be requested prior to release.

(4) Perpetuate the statement found at paragraph D.1.c. on all documentation provided to a subrecipient.

c. The incorporation of the above provisions will be made to the sales contract or exchange/sale documentation.

d. The DUC is not required for MLI/CCLI not meeting the criteria of property requiring

demilitarization and authorized for release or for TWS material.

4. Preparation of sales solicitations and exchange sale agreements.

a. The legend "Cat II" or "IC/DV" (for FEPP), as applicable, shall be entered directly below the item number on the item description pages of the sale solicitations for those items comprised of or containing MLIs/CCLIs. (See subparagraph Q. below.)

b. Sale items not consisting of U.S. Origin material shall be specifically and clearly identified in sale solicitations. Each sale solicitation shall contain a statement that all items not otherwise designated are considered to be of U.S. Origin.

c. Appropriate TSC-related terms and conditions shall be incorporated in sale solicitations. These terms and conditions include, but are not limited to (see Appendix 6):

(1) The article entitled "Disposition and Use of Property".

(2) The article entitled "Import Certificate and Verification of Delivery," where applicable.

(3) The article entitled "Government as Shipper". This article shall be used when Category II property to be sold is located in non-exempted overseas areas other than the European area.

(4) A statement regarding disposition and use of property shall be included in all sale solicitations. (See subparagraph D.1.c. above.)

d. Preparation of exchange sale agreements will be in accordance with Chapter 2.

**G. REGISTRATION AND STATEMENT REGARDING DISPOSITION AND USE OF PROPERTY (REGISTRATION AND END USE CERTIFICATES (EUCs) AND DISPOSITION AND USE CERTIFICATES (DUCs)) (see Attachments 1 and 2, this Chapter).**

1. All sale bidders and other prospective barter/trade/exchange recipients of MLI/CCLI shall be required to complete and sign an EUC. Clearances for successful recipients will be initiated and, if clearance is granted, will place the recipient on the CBL for a period of 5 years and a unique recipient clearance number will be assigned. Recipients on the CBL are required to provide only their recipient clearance number on future bids/requests unless bidding/requesting TWS items or authorized demilitarization required material (see G.2. below). Further, all sale bidders and approved barter/trade recipients located in or receiving property from foreign areas will be required to complete and sign an EUC for both Category II and III property.

2. Cleared recipients will submit the DUC found at attachment 2 for TWS items and authorized demilitarization required material.

3. Information appearing on the EUC/DUC is an integral part of the submitted bid/transaction. The information shall be thoroughly considered and weighed in determining whether acceptance would be consistent with the TSC requirements of the United States.

4. The DUC furnished by the successful bidder and approved barter/trade recipient shall be attached to the original contract/transfer document. Copies of all contracts/transfer documents and successful bidder and approved barter/trade recipient submitted DUCs shall be furnished to the appropriate TSCRO.

5. Changes to intended uses indicated on the DUC by sales recipients require the written approval of the SCO/PLCO before any change is made. For changes to intended uses indicated on DUCs for approved barter/trades, the written approval of the TSCRO is required.

6. For property in the possession of government contractors:

a. Any changes in destination, use or disposition specified in the bidder's and approved barter/trade recipient's DUC prior to release will require written permission of the seller in coordination with the PLCO.

b. Any changes in the destination, use or disposition specified in the bidder's and approved barter/trade recipient's DUC after release will require written consent of the TSCRO identified in the contract clause.

7. If a bidder's or approved barter/trade recipient's DUC indicates that they do not know or are unsure of the identity of subpurchasers/subrecipients or the country of destination, the bidder's/recipient's later determination of such information shall be regarded as a change of fact or intention within the meaning of the DUC. Further, DUCs which are completed to such effect are subject to follow-up action (see paragraph J, below).

8. Where changes or additions are made to the DUC, the following applies:

a. Where any requested change is determined to be unacceptable and is accordingly disapproved, one of the actions described in the subparagraphs below, depending upon the prevailing circumstances, shall be taken unless the bidder and approved barter/trade recipient withdraws the request and agrees in writing to abide with approved uses, dispositions, and destinations as well as to comply with applicable contractual terms.

(1) If award/authorization has not been made, the bid/request shall be rejected.

(2) If award/authorization has been made but the property has not been removed by the purchaser/recipient, removal shall not be permitted and default action shall be initiated, where appropriate.

(3) If sale property is already in the purchaser's custody, the SCO/PLCO shall notify the purchaser, in writing, that the requested change has been disapproved and that the purchaser is being

required to furnish written acknowledgment of the notification. At the time of the notification, the purchaser shall be offered the opportunity of submitting an alternate change approval request for consideration. If the purchaser neither withdraws the disapproved request nor submits an alternate change approval request, action in accordance with subparagraphs J and L below shall be initiated. The DoD Demilitarization/TSC Program Office will effect notification and resolve all issues with barter/trade recipients.

b. Where approval for changes to intended use, disposition, or destination expressed on the DUC is requested before delivery of the property to a successful bidder or approved barter/trade recipient, the delivery shall be deferred until consideration of the requested change. The effect of such a request shall be to require a review of the contract/documentation and re-approval or disapproval of the request.

c. Change approval requests shall not be approved unless the proposed use, disposition, or destination would have been approved if initially indicated on the originally submitted DUC.

#### H. CLEARED BIDDERS(/RECIPIENTS) LIST (CBL).

1. DRMS Marketing shall compile, maintain, and distribute a consolidated list of cleared bidders/recipients. The list shall contain the names and addresses of purchasers and recipients of MLI/CCLI material who are registered or have been accorded TSC clearance by the TSCRO for inclusion on the list of cleared bidders/recipients.

2. Individuals and firms on the CBL shall be re-cleared at 5-year intervals (normally on or before the anniversary of the date of the TSCRO's original approval of their inclusion on the list). Those individuals and firms which have remained active and have established their integrity and reliability may be re-cleared automatically by the TSCRO. Inactive bidders and recipients; that is, those who have not been involved in any transaction for 1 year, shall be automatically deleted from the list. For those bidders and recipients of uncertain or unproven integrity and reliability, an I&R check shall be requested as an action incident to determining whether such individuals and firms shall be retained on the CBL.

3. Bidders and recipients who commit TSC violations, whether administrative, technical or substantive shall, after coordination with counsel, be considered for removal from the CBL.

#### I. BIDDERS(/RECIPIENTS) EXPERIENCE LIST (BEL).

1. Bidders and recipients who commit administrative or technical violations of TSCs or are suspected of diversion of property may be considered for placement on the BEL by the TSCRO. After proper notice to and opportunity to comment by the buyer and after coordination with counsel, the TSCRO may place the bidder/recipient on the BEL and prohibit them from receiving additional material. Awards may not be made to individuals and firms identified on the BEL until such time as the related violations are corrected.

a. Such action shall be taken by the TSCRO on the basis of information received from

SCOs/PLCOs, diplomatic posts, independent investigation or other competent sources. Only technical and substantive violations shall be subject to review by the Office of Counsel designated to support the TSCRO or HQ DLA Office of Counsel.

b. The TSCRO shall notify the SCO/PLCO of such action and the basis for the action taken. The SCO/PLCO/TSCRO, in turn, shall apprise the affected bidder or recipient that the action has been taken and courses of remedial measures available to the individual or firm.

c. Purchasers, subpurchasers, recipients and subrecipients who commit administrative violations will be placed on the BEL for one year however, they may be removed from the BEL by compliance and correction of the violation which precipitated the action.

(1) Purchasers, subpurchasers, recipients and subrecipients who commit technical violations will be placed on the BEL for:

(a) First Offense: Written warning.

(b) Second Offense: 3 months.

(c) Third Offense: 6 months.

(d) Fourth Offense: 12 months.

(e) Fifth Offense: 18 months.

(f) Sixth Offense: 24 months.

(g) Seventh Offense: 36 months.

2. DRMS Marketing shall maintain the BEL and shall ensure access to the CBL/BEL is available to the TSCROs, SCOs and PLCOs.

#### J. DEBARRED BIDDERS LIST (DBL).

1. The DBL is a joint publication (DLA and GSA) containing a consolidated list of names of individuals or firms to whom contracts may not be awarded and from whom bids or proposals may not be solicited.

2. The FPMR and this manual are recognized as the authority for the suspension or debarment of bidders/contractors whose only contractual dealings with the DoD are through participation in DRMS sales of Federal personal property generated by the DoD.

3. The suspension or debarment of a contractor from the purchase of Federal personal property has Government-wide effect and precludes any agency from entering into a contract for purchase of personal property with that contractor unless the agency's head or a designee determines that there

is a compelling reason for such action (See FAR 9.405(a)).

4. In addition to applicable guidance in the FAR and DoD FAR Supplement, contractors suspended, debarred, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of another contractor. Firms or individuals who submit bids on sale solicitations on behalf of suspended or debarred contractors, or in any other manner conduct business with the Government as agents or representatives of suspended or debarred contractors, may be treated as "affiliates" in accordance with FAR 9.403 and may be suspended or debarred.

#### K. FOLLOW-UP ACTION.

1. Follow-up action in the form of a letter comparable to that at attachment 3, this chapter, shall be sent as deemed appropriate. Emphasis will be placed on TWS property and demilitarization required property authorized for release. If a satisfactory reply is not received within 30 days, the provisions of subparagraph J.3. below applies.

2. The SCO/PLCO shall be responsible for the follow-up action for OCONUS sales, with copies of the follow-up letter sent simultaneously to the appropriate TSCRO. The applicable TSCRO shall be responsible for follow-up actions for CONUS sales.

3. Additional follow-up letters shall be sent, if required, at 30-day intervals and no additional awards/dispositions shall be made by the SCO/PLCO to bidders/recipients involved until satisfactory replies are received. If no satisfactory reply is received three months after the original letter is sent, the bidder/recipient may be considered for placement on the BEL for one year and removal from the CBL. If an unauthorized diversion is suspected, an investigation will be initiated and a full report shall be forwarded by the TSCRO to DLA DCIA.

4. Sales contracts remaining open after two fiscal years shall be forwarded to the TSCRO for determination if additional follow-up actions are necessary or if the case may be closed.

5. Follow-up letters shall be sent to successful bidders/recipients only and not to subpurchasers or subrecipients, unless it is known at the time of sale that the original purchaser/recipient is merely acting as a forwarding agent. In such cases follow-up letters shall be sent to the subpurchaser or subrecipient.

6. If contract violations are suspected, the SCO/PLCO/TSCRO shall request from a successful bidder/recipient information regarding disposition and use of the property awarded to that bidder/recipient.

#### L. INADVERTENT RELEASE AND RETRIEVAL OF DEMILITARIZATION REQUIRED PROPERTY AND PROPERTY REQUIRING TSCs.

1. In cases where property is released from DoD control and is subsequently determined to be demilitarization required, on a case-by-case basis and in coordination with the TSCRO, DRMS will

attempt to recover the property.

2. If the buyer declines to return or demilitarize the property, the SCO/PLCO will notify counsel, the appropriate TSCRO and the DoD Demilitarization Program Office for possible follow-up action.

3. In cases where property is released from DoD control and is subsequently determined to be a TWS item not requiring demilitarization, the SCO/PLCO/DoD Demilitarization/TSC Program Office, as appropriate, will ensure that the recipient is informed of the provisions of paragraph D.1.c. above.

#### M. END USE CHECKS.

1. In instances where an individual suspects that diversions of property to Denied Areas or other unauthorized destinations may take place, an end use check shall be requested to determine if the property arrived at the destination designated in the DUC.

2. Requests for end use checks in foreign areas shall be addressed to the TSCRO, accompanied by as much specific information as possible; that is, ultimate consignee, description of the property, final destination, shipping data, date of shipment, and stated end use. The TSCRO will coordinate the end use check with the pertinent U.S. diplomatic mission, if appropriate.

N. DENIED AREAS: Countries for which the export and/or import of commodities, defense articles, defense services and/or SME are denied licensing or other approvals required for sales or transfers as a matter of U.S. foreign policy. DoD will utilize the DoS's Prohibited Country List (as provided in the ITAR), the DoC's Special Country List (as provided in the EAR), and the TD's Sanctioned Country List and Specially Designated Nationals and Blocked Persons Lists (as provided in the Foreign Assets Control Regulations, 31 CFR 500 et seq.). The latest information concerning a change to a country's status may be obtained from the DoD Demilitarization/TSC Program Management Office, the DoD Demilitarization Program web page or the appropriate TSCRO. DoD personnel attempting to sell, transfer or advertise for the sale or transfer of prohibited materiel to any Denied Country are subject to penalties for violation of the preceding listed provisions and under 18 USC 371 and 641.

#### O. INVESTIGATIONS.

1. Initiation and coordination of investigations of actual or suspected violations of the TSC provisions and conditions of sales contracts and barter/trade requests shall be the responsibility of the designated TSCRO in the area for which it is responsible. In locations not serviced by a TSCRO, this responsibility is assigned to DLA DCIA. When an investigation confirms that a violation has occurred, action shall be taken by the TSCRO in accordance with the procedures at subparagraphs J and L.

2. In the conduct of investigations, the TSCRO shall be authorized to call on the pertinent embassies and consulates, U.S. and foreign government investigative and intelligence agencies, and the office of the U.S. Attorney for assistance. The investigative results shall be coordinated with



assigned counsel, DLA DCIA and the DoD Demilitarization/TSC Program Office and reported under the provisions of DLAI 5705.1, Reporting of Criminal Violations. These agencies shall also provide the TSCRO with information indicating that MLI/CCLI is being or may have been diverted to a prohibited destination. Information copies of such reports shall also be sent directly to the DTRA-ST.

#### P. DIVERSIONS.

1. When investigations are conducted under the supervision and direction of, or in coordination with, the TSCRO to determine whether an attempt has been made to divert property, pertinent information shall be forwarded directly to the DTRA-ST for institution of action to prevent the diversion.

2. Whenever it has been established by satisfactory evidence that the property was diverted, transshipped, or re-exported to a Denied Area or other unauthorized destination, or such actions were attempted, contrary to the terms of the contract/request, a summary of the investigation and recommendation of the TSCRO shall be forwarded upon completion, directly to the DTRA-ST for institution of debarment or suspension or administrative action in accordance with the procedures of the Interagency Administrative Action Program.

#### Q. SALES TO FRIENDLY FOREIGN GOVERNMENTS OR INTERNATIONAL ORGANIZATIONS.

1. FMS of excess material to be consummated in accordance with DoD 5105.38-M are exempted from this paragraph since TSC requirements are fulfilled by the LOA processing action.

2. Non-FMS sales of excess, surplus and FEPP MLI/CCLI property to friendly foreign governments and international organizations are generally exempted from the provisions of this paragraph except the contracts shall include the following:

"The government (or agents) or (name of country or international organization) certifies that the property covered by this contract is intended for use in and by (name of country). However, if resale or export is to be accomplished of any of the property, the government (or agent) of (name of country or international organization) agrees to obtain the approval of the Contracting Officer (or PLCO) unless specifically excepted in this contract."

a. The SCO/PLCO shall approve such resale only if the proposed purchaser/recipient's name does not appear on the DBL or the BEL, and the foreign government or international organization concerned agrees that any later disposition must not involve the transfer of the related material to Denied Area nations or denied persons/entities. If the purchasing government or organization refuses to sign such agreement, sale shall be deferred and the matter shall be referred through the TSCRO to the DDPO for decision. Resale approval is not required for Category III items.

b. Category I and II items must not be sold to Denied Areas or buyers intending to export

to Denied Areas or denied persons/entities.

## R. ADDITIONAL REQUIREMENTS FOR PROPERTY SOLD IN OVERSEAS AREAS.

1. CATEGORIES OF MATERIAL. For TSC purposes, material is categorized and accorded levels of control when sold:

a. Category I: Comprised of undemilitarized MLIs which, in accordance with this manual, require demilitarization. Category I material may not be sold to private individuals or firms unless otherwise authorized by the DDPO; it may be sold or transferred to friendly foreign governments and approved international organizations as specified in DoD 4160.21-M and DoD 5105.38-M.

b. Category II: Consists of the following, regardless of sale price:

(1) MLIs which need not be demilitarized and CCLIs.

(2) Demilitarized items from Category I which contain undemilitarized MLI/CCLI components which do not require further demilitarization.

**NOTE:** Category II material may be sold to private individuals or firms subject to the restrictions and controls stipulated in this Chapter if such individuals or firms are not located in a Denied Area or denied persons/entities; or on a DBL/BEL. Category II material may be sold or transferred to friendly foreign governments and international organizations subject to the procedures prescribed by DoD 4160.21-M.

c. Category III: Is comprised of all other items and commodities (including salvage, scrap and completely demilitarized MLI; that is, no usable MLI/CCLI components remaining intact). This material may be sold to private individuals or firms in foreign areas other than a Denied Area or denied persons/entities; or not on the DBL or the BEL. Category III material may be sold or transferred to friendly foreign governments and international organizations subject to the procedures prescribed by DoD 4160.21-M.

## 2. INTEGRITY AND RELIABILITY (I&R) CHECKS AND CLEARANCES.

a. On sales, barter, trades, etc. of MLIs/CCLIs in foreign areas, a determination shall be made of the acceptability (vis-a-vis security considerations of the United States) of potentially successful bidders/recipients as well as subpurchasers and subrecipients designated by the bidders/recipients in their submitted DUCs and change approval requests. SCOs/PLCOs shall request the U.S. diplomatic mission in the country in which the bidder/recipient is located or conducts the preponderance of their business endeavors to perform an I&R check. An I&R check need not be requested if the bidder/recipient already appears on the CBL unless there is indication that the bidder/recipient's status may have changed since accomplishment of the earlier I&R check. I&R checks shall also be requested for all subpurchasers and subrecipients as such parties become known (that is, are identified on the EUC or related change approval request). To the extent possible, the diplomatic

mission should be furnished information regarding the material proposed for award. Information copies of requests for I&R checks shall be provided to the TSCRO servicing the theater. Further, such requests shall ask that the diplomatic mission furnish information copies of the mission's response(s) thereto to the TSCRO who will coordinate the other portions of the I&R check and make the final determination on the TSC clearance. I&R checks are not required and need not be requested for U.S. citizens having their principal places of business in the United States.

b. I&R checks are not required for sales of Category III material and the SCO/ACO/PCO shall award contracts for such material if the bidder/recipient has submitted an acceptable DUC and is not:

(1) On the DBL.

(2) On the BEL.

(3) Located in a Denied Area.

(4) Proposing any use or disposition of the material which would be adverse to the security interests of the United States.

c. If a bidder/recipient cannot be identified by the diplomatic mission under the name and address furnished, the SCO/PLCO and the TSCRO shall be so notified and no award shall be made. Such additional information as may be required by the diplomatic mission to effectively conduct a conclusive I&R check shall be furnished by the SCO/PLCO and the TSCRO, as applicable.

d. Based upon favorable information being provided by the diplomatic mission as a result of the mission's conduct of an I&R check, the SCO/PLCO, upon receipt of advice of such I&R clearance and approval of the TSCRO, may make the award. Final determination regarding placement of the subject of I&R clearance on the CBL is a responsibility of the TSCRO.

e. Whenever the results of an I&R check are derogatory to the extent that initiation of debarment action is considered proper, award of the material to the subject bidder/recipient shall be denied and debarment action shall be initiated.

f. Under no circumstances shall inquiries regarding denial of awards be referred to diplomatic missions. Prior clearance of any portion of derogatory information proposed for release to bidders/recipients shall be obtained from the TSCRO. Unless overriding factors such as security or business confidentiality require otherwise, requests for rationale for denial of award received from affected bidders/recipients shall be complied with by SCOs/PLCOs after necessary coordination with the TSCRO.

g. Diplomatic missions need not be requested to conduct an I&R check on any bidder/recipient appearing on any suspended or debarred bidders/recipients list or on the BEL; bids received from such parties shall be rejected outright. Further, diplomatic missions need not be requested to accomplish I&R checks on other than the high (and, where warranted, the next-to-high)

bidder/recipient and the subpurchaser(s) or subrecipient(s) concerned.

### 3. IMPORT CERTIFICATE AND DELIVERY VERIFICATION (IC/DV) SYSTEM.

a. This system or a comparable system is applicable to MLI/CCLI on the USML or the Commerce Control List, to include salvage material. It shall be used for destination control purposes when MLI/CCLI material is to be imported into a country which employs the IC/DV system as part of its export controls (coordinate with applicable TSCRO for IC/DV information). In such cases the purchaser/recipient is responsible for obtaining the appropriate IC/DV documents and providing them to the SCO/PLCO. If the original purchaser/recipient does not intend to retain possession of IC/DV property and is authorized to resell/redistribute the property to a cleared subpurchaser/subrecipient during the removal period specified in the contract/request, the original purchaser/recipient shall be required to transfer responsibility for the fulfillment of any IC/DV requirements to the subpurchaser/subrecipient.

b. When the IC/DV system is not applicable and when MLI/CCLI material has been released for export, the successful purchaser/recipient (or subpurchaser/subrecipient) to whom this responsibility has been transferred) shall be required to furnish the SCO/PLCO evidence of its arrival at the approved destination and delivery to the approved consignee through a receipted copy of the bill of lading, a Landing Certificate issued by the country of import, or other appropriate documentation.

### 4. UNITED STATES GOVERNMENT AS SHIPPER.

a. When sales of MLIs/CCLIs are made in areas other than the European Command (EUCOM) area and acceptable bidders/recipients propose to transport the property from the foreign country in which it is located to an acceptable destination, they shall be required to ship the property, at the buyer's risk and expense, on a commercial shipping document showing the U.S. Government as the shipper, to a consignee and destination named by the buyer and acceptable to the United States.

b. Each shipping document shall include this statement: "Only the U.S. Government may divert this shipment to other than the consignee or destination."

c. All costs of packing, handling, and transportation, including desired insurance, shall be borne and prepaid by the buyer.

d. Provisions shall be made in the sales contract to indemnify the U.S. Government against all claims or suits of any nature arising under or incidental to the contract by reason of the fact that the U.S. Government appears as shipper on the commercial bill of lading.

e. When property has been released for export, the successful bidder shall be required to furnish evidence of its arrival at the approved destination and delivery to the approved consignee through a receipted copy of the bill of lading, a landing certificate issued by the country of import, or other pertinent documentation.

f. The special condition, Government as Shipper, appears at Appendix 6.